

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

STEWARD HEALTH CARE SYSTEM, LLC, :  
BLACKSTONE MEDICAL CENTER, INC., :  
f/k/a STEWARD MEDICAL HOLDING :  
SUBSIDIARY FOUR, INC., BLACKSTONE :  
REHABILITATION HOSPITAL, INC., f/k/a :  
STEWARD MEDICAL HOLDING SUBSIDIARY :  
FOUR REHAB, INC. : C.A. No. 13-405-S  
:  
v. :  
:  
BLUE CROSS & BLUE SHIELD OF :  
RHODE ISLAND :

**BLUE CROSS & BLUE SHIELD OF RHODE ISLAND'S**  
**ANSWER TO AMENDED COMPLAINT**

Blue Cross & Blue Shield of Rhode Island (“BCBSRI”) files this Answer to Plaintiffs’  
Complaint.

**Introduction**

1. BCBSRI admits that the Complaint purports to assert federal and state antitrust claims and state common law tort claims, denies the factual allegations, further denies any liability, and finally denies Plaintiffs’ right to any relief requested therein.

2. BCBSRI admits that it provides, inter alia, certain commercial (i.e., non-governmental) health insurance in Rhode Island. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

3. BCBSRI admits that it contracts with certain hospitals to reimburse them for various services purchased by BCBSRI’s members, and denies the remaining characterizations and allegations.

4. Denied.

**Parties, Co-Conspirators and Jurisdiction**

5. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

6. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

7. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

8. BCBSRI admits that it is a Rhode Island non-profit hospital service and medical service corporation authorized and organized in accordance with R.I. Gen. Laws § 27-19-1 et seq. and § 27-20-1 et seq., with its principal place of business at 500 Exchange Street, Providence, Rhode Island 02903, admits that it contracts with certain hospitals to reimburse them for various services purchased by BCBSRI's members and provides health insurance for its members and members of affiliated health plans in its service area, which includes Rhode Island; the remaining allegations are denied.

9. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

10. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

11. The allegations in paragraph 11 set forth a conclusion of law with respect to which no response is required. To the extent a further response is required, BCBSRI admits the Complaint purports to allege federal question jurisdiction, but denies it has any liability to Plaintiffs under any theory or in any amount.

12. BCBSRI admits that it is engaged in interstate commerce, denies that the “conduct alleged” substantially affects interstate commerce as it denies the “conduct alleged,” and admits that under certain circumstances BCBSRI provides certain commercial health insurance products that cover Rhode Island residents when they travel outside Rhode Island. The remaining allegations set forth conclusions of law to which no response is required.

13. The allegations in paragraph 13 set forth a conclusion of law with respect to which no response is required. To the extent a further response is required, BCBSRI admits the Complaint purports to allege subject matter jurisdiction based on diversity of citizenship, but denies that it has any liability to the Plaintiffs under any theory or in any amount.

14. BCBSRI admits that Plaintiffs allege an amount in controversy that exceeds \$75,000 exclusive of interest and costs, but denies any liability to Plaintiffs in any amount.

15. The allegations in paragraph 15 set forth conclusions of law with respect to which no response is required. To the extent a further response is required, BCBSRI denies that it has any liability to Plaintiffs under any theory or in any amount.

16. BCBSRI admits that this Court has personal jurisdiction over BCBSRI, but denies any liability to Plaintiffs.

17. The allegations in paragraph 17 set forth a conclusion of law with respect to which no responsive pleading is required. To the extent a further response is required, BCBSRI admits that the Complaint purports to allege venue in this District, but denies that it has any liability to Plaintiffs under any theory or in any amount.

### **Factual Background**

18. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

19. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

20. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

21. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

22. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

23. R.I. Gen. Laws §§ 23-17.25-1(4) and (5) are sections of a statute that speaks for itself. To the extent the allegations differ therefrom or are inconsistent therewith, they are denied. BCBSRI lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegations.

24. Admitted that the Special Master brought an action against BCBSRI which was dismissed with prejudice; the remaining allegations are denied.

25. The January 2010 Rhode Island Office of the Health Insurance Commissioner report entitled “Variations in Hospital Payment Rates by Commercial Insurers in Rhode Island” speaks for itself. To the extent the allegations differ therefrom or are inconsistent therewith, they are denied. The remaining allegations are denied.

26. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

27. BCBSRI’s objection and the June 8, 2011 Court Order, respectively, speak for themselves. To the extent the allegations differ therefrom or are inconsistent therewith, they are denied.

28. BCBSRI is without knowledge or information sufficient to form a belief about the truth of the allegations.

29. BCBSRI is without knowledge or information sufficient to form a belief about the truth of the allegations.

30. Admitted that Steward and BCBSRI exchanged certain reimbursement rate proposals and counter-proposals in September and October of 2011. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

31. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

32. Denied.

33. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegation that Lifespan and Thundermist knew that as long as the Special Master believed he could find a buyer, such as Steward, who planned to preserve a “full service” Landmark, there was virtually no chance the Special Master would accept Lifespan’s and Thundermist’s reduced-service, treat and transfer model for Landmark. The remaining allegations are denied.

34. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations that Steward’s plan to revitalize Landmark and slow or stop the outflow of its patients to the more expensive hospitals in Rhode Island would, if successful, reduce the usage of Lifespan hospitals and that, if more community hospitals received the rate increases and investment dollars that enabled them to modernize and upgrade their services, the threat to Lifespan’s patient share would be even greater. The remaining allegations are denied.

35. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

36. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations that Lifespan and Thundermist wanted to increase their chances of successfully preventing Steward's entry and not suffering the adverse consequences of being publicly perceived as responsible for Landmark's failure. The remaining allegations are denied.

37. BCBSRI denies the allegations in the third sentence. BCBSRI further denies the allegations in the fourth sentence concerning BCBSRI "maintaining its monopoly on the sale of commercial health insurance in Rhode Island." BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

38. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

39. BCBSRI denies the allegations in the first sentence. BCBSRI further denies that Thundermist sought and received commitments of support and assistance from BCBSRI, including among other things a joint communications plan to defuse any public criticism of Thundermist. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

40. BCBSRI denies the allegations in the first sentence. BCBSRI admits that a consultant of BCBSRI was formerly a CEO of Thundermist. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

41. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

42. Admitted that a bill had been proposed in both houses of the Rhode Island legislature to amend the Hospital Conversion Act, the terms of which speak for themselves. To the extent the allegations differ therefrom, they are denied.

43. Admitted that at a February 7, 2012 hearing before the Rhode Island House Corporations Committee, BCBSRI representative Monica Neronha testified. Her testimony speaks for itself. To the extent the allegations differ therefrom, they are denied. The remaining allegations are denied.

44. Denied.

45. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

46. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Steward meeting with Thundermist in an effort to reach a memorandum of understanding and Thundermist's rejection of Steward's proposals for an MOU with Landmark. The remaining allegations are denied.

47. BCBSRI is without knowledge or information sufficient to form a belief about the truth of the allegations that Lifespan assured Thundermist that it was committed to stepping in and taking over Landmark after Landmark failed, and thereafter working with Thundermist to implement its treat and transfer model for a reduced-services version of Landmark and that Thundermist reassured Lifespan, among others, that any suggestion that Steward was making progress in its negotiations with Landmark was not accurate. The remaining allegations are denied.

48. BCBSRI is without knowledge or information sufficient to form a belief about the truth of the allegations.

49. Admitted that BCBSRI filed a formal application with the Rhode Island Department of Health to make a “material plan modification” to its insurance plan whereby, if granted, BCBSRI would have removed Landmark from its provider network. The remaining allegations are denied.

50. Admitted that negotiations between Steward and BCBSRI continued in May 2012; the remaining allegations are denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied that the allegations set forth fully the proceedings before the Court; and the remaining allegations are denied.

56. Admitted that Steward and BCBSRI participated in court-ordered mediation and that no resolution was reached; admitted that Steward did not acquire Landmark; BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

57. Denied.

58. Admitted that Prime Healthcare Services acquired Landmark. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegation that after Steward announced that it was terminating its efforts to acquire Landmark, the Special Master announced a new Asset Purchase Agreement with Prime Healthcare Services, a for-profit system headquartered in California. The remaining allegations are denied.



59. Admitted that from time to time BCBSRI had contracts with St. Anne's Hospital and that at some point in time BCBSRI gave notice that it would not renew its contract with St. Anne's Hospital, a Steward-owned hospital in Fall River, Massachusetts; the remaining allegations and/or characterizations are denied.

60. Admitted that BCBSRI did not renew its contract with St. Anne's Hospital and admitted that BCBSRI informed certain of its subscribers of how they could make use of the "BlueCard Program" and how that program works; and the remaining allegations and/or characterizations are denied.

61. Denied.

62. Admitted that BCBSRI rejected Steward's offer; the remaining allegations are denied.

63. Denied.

64. Admitted that St. Anne's Hospital owes BCBSRI money for overpayments; the remaining allegations are denied.

65. Denied.

66. The allegations in paragraph 66 set forth conclusions of law with respect to which no responsive pleading is required.

67. The December 2012 OHIC Report speaks for itself; to the extent the allegation differs therefrom or is inconsistent therewith, it is denied. The allegation regarding the relevant geographic market is a conclusion of law to which no responsive pleading is required. The remaining allegations are denied.

68. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegation that all health insurance companies that operate in Rhode Island treat

Rhode Island as a relevant geographic market. Admitted that BCBSRI is distinct from the Blue Cross Blue Shield organizations in other states, such as Massachusetts; the remaining allegations are denied.

69. BCBSRI is without knowledge or information sufficient to form a belief as to the truth of the allegations.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

#### **COUNT I**

78. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

79. The allegation in paragraph 79 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

80. The allegation in paragraph 80 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

## **COUNT II**

85. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

86. The allegation in paragraph 86 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

87. The allegation in paragraph 87 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

## **COUNT III**

93. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

94. The allegation in paragraph 94 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

95. The allegation in paragraph 95 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

#### **COUNT IV**

102. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

103. The allegation in paragraph 103 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

104. The allegation in paragraph 104 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

#### **COUNT V**

109. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

110. The allegation in paragraph 110 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

111. The allegation in paragraph 111 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

#### **COUNT VI**

116. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 if again set forth in full.

117. The allegation in paragraph 117 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

118. The allegation in paragraph 118 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

#### **COUNT VII**

124. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

125. The allegation in paragraph 125 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

126. The allegation in paragraph 126 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

**COUNT VIII**

132. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

133. The allegation in paragraph 133 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

134. The allegation in paragraph 134 sets forth a conclusion of law with respect to which no responsive pleading is required. To the extent a response is nonetheless deemed to be required, the allegations are denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

**COUNT IX**

139. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 and 78 through 84 as if again set forth in full.

140. Denied.

141. Denied.

**COUNT X**

142. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 and 85 through 92 as if again set forth in full.

143. Denied.

144. Denied.

**COUNT XI**

145. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 and 93 through 101 as if again set forth in full.

146. Denied.

147. Denied.

**COUNT XII**

148. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 and 102 through 108 as if again set forth in full.

149. Denied.

150. Denied.

**COUNT XIII**

151. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 and 109 through 115 as if again set forth in full.

152. Denied.

153. Denied.

**COUNT XIV**

154. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 and 116 through 123 as if again set forth in full.

155. Denied.

156. Denied.

**COUNT XV**

157. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 and 124 through 131 as if again set forth in full.



158. Denied.

159. Denied.

**COUNT XVI**

160. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 and 132 through 138 as if again set forth in full.

161. Denied.

162. Denied.

**COUNT XVII**

163. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

164. The allegation in paragraph 164 sets forth a conclusion of law with respect to which no responsive pleading is required.

165. Denied.

166. Denied.

167. Denied.

**COUNT XVIII**

168. BCBSRI incorporates by reference its responses to paragraphs 1 through 77 as if again set forth in full.

169. The allegation in paragraph 169 sets forth a conclusion of law with respect to which no responsive pleading is required.

170. Denied.

171. Denied.

172. Denied.

173. Denied.

## **DEFENSES**

Subject to the responses above, BCBSRI asserts the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein.

### **First Defense**

Plaintiffs' antitrust counts fail to state a claim upon which relief may be granted.

### **Second Defense**

Plaintiffs lack standing to bring the purported federal and state antitrust claims.

### **Third Defense**

Plaintiffs did not sustain antitrust injury or incur antitrust damages.

### **Fourth Defense**

Plaintiffs' Complaint is barred, in whole or in part, by the doctrines of collateral estoppel or issue preclusion, as Steward was in privity with and/or a party that directed or controlled the actions of Landmark, and Landmark's claims against BCBSRI were previously dismissed with prejudice.

### **Fifth Defense**

Plaintiffs' Complaint is barred, in whole or in part, by the doctrine of *res judicata* or claim preclusion, as Steward was in privity with and/or a party that directed or controlled the actions of Landmark, and Landmark's claims against BCBSRI were previously dismissed with prejudice.

### **Sixth Defense**

Plaintiffs' Complaint is barred, in whole or in part, by the doctrine of judicial estoppel.

**Seventh Defense**

Plaintiffs' Complaint is barred, in whole or in part, by the Noerr-Pennington doctrine and/or the State Action Doctrine.

**Eighth Defense**

BCBSRI's actions with respect to the Legislature and/or regulatory authorities are immune from liability under R.I. Gen. Laws § 9-33-2.

**Ninth Defense**

BCBSRI had a legitimate business justification and/or privilege for its actions with respect to Plaintiffs, which were in no way improper.

**Tenth Defense**

Plaintiffs' claims are barred by the "Competition Privilege," as such actions were justified in furtherance of competition.

**Eleventh Defense**

Plaintiffs' antitrust claims are barred by the McCarran-Ferguson Act.

**Twelfth Defense**

Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, unclean hands, and acquiescence.

**Thirteenth Defense**

Plaintiffs' claims are barred, in whole or in part, because BCBSRI's alleged actions were not the proximate cause of any alleged damages to Plaintiffs, which damages BCBSRI does not admit.

**Fourteenth Defense**

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to take reasonable steps to mitigate their alleged damages.

**Fifteenth Defense**

BCBSRI asserts the foregoing defenses upon information presently available, and to avoid waiver. BCBSRI reserves the right to assert additional defenses as further information becomes available and consistent with the rules and any scheduling or case management order of the Court.

WHEREFORE, BCBSRI demands judgment against Plaintiffs and in BCBSRI's favor plus costs.

Dated: September 18, 2015

DEFENDANT, BLUE CROSS & BLUE SHIELD  
OF RHODE ISLAND  
By its attorneys,

/s/ John A. Tarantino

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**Certificate of Service**

I hereby certify that on September 18, 2015, I filed the within Answer through the ECF system and that notice will be sent electronically to the below listed counsel who are registered participants identified on the mailing information for Case No. 13-405-S.

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